

TITLE 33 - DEPARTMENT OF AGRICULTURE, DIVISION OF MANAGEMENT AND FINANCE

Chapter 1 - PACKER BONDING REGULATIONS

001 Purpose The purpose of these rules and regulations is to establish requirements for the purchasers of slaughter livestock registered with the director pursuant to the Nebraska Livestock Sellers Protective Act. Such registrants are required to provide the director with assurances of their financial ability to faithfully and promptly account for and pay to the sellers with whom they deal, the total proceeds from the sales of slaughter livestock, except where such assurances are preempted by the Federal Packers and Stockyards Act of 1921, as amended, and the regulations adopted thereunder.

002 Definitions The definitions of terms contained in the Nebraska Livestock Sellers Protective Act shall apply when such terms are used in these rules and regulations. In addition, the term "bond equivalent" shall mean a trust agreement fully complying with the laws of the State of Nebraska and these rules and regulations.

003 Requirements Except as provided by 33 NAC 1-003.06, registrants under the Nebraska Livestock Sellers Protective Act shall provide the director assurances of their financial ability to faithfully and promptly account for and pay to the sellers with whom they deal or their designated representatives, the total proceeds from sale of slaughter livestock in accordance with the following requirements:

003.01 Each registrant shall file a surety bond or bond equivalent with the director. Such surety bonds and bond equivalents shall meet the following requirements:

003.01A Bond equivalents shall be in the form of a trust agreement, and the fund of the trust shall be in the form of fully negotiable obligations of the United States or certificates of deposit insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

003.01B The amount of the bond or bond equivalent shall be not less than the next multiple of five thousand dollars (\$5,000) above the average of all slaughter livestock purchased in Nebraska during a period equivalent to two (2) business days based on the total number of business days and the total amount of such transactions in the preceding twelve (12) months, or in such substantial part thereof, if any, in which the registrant did business. In the case of new registrants, the amount of the bond or bond equivalent shall be based upon the level of purchases reasonable to be expected, as determined by the director. For the purpose of computing average daily value, two hundred and sixty (260) is deemed the number of business days in a year.

003.01C Whenever a registrant's weekly purchases exceed one hundred fifty percent (150%) of his average weekly purchases, such fact shall be reported to the director, and the director may require an increase in the amount of the bond or bond equivalent. The amount of the increase shall be determined by the director, but shall not be excessive in relation to the increased volume of purchases.

003.01D All registrants shall review their level of purchases each six (6) months to determine the adequacy of their bonds or bond equivalent.

Whenever such a review reveals that the level of purchases has increased to such an extent that the amount of the bond or bond equivalent should be increased by five thousand dollars (\$5,000) or more based upon the formula set out above, a new or amended bond or bond equivalent of such amount shall be filed.

003.01E Bonds or bond equivalents shall provide that prior to terminating or reducing the amount of the bond or bond equivalent, at least thirty (30) days notice, in writing, shall be given to the director by the party terminating or reducing the amount; Provided, that no such notice shall be required in cases wherein a replacement bond or bond equivalent of sufficient amount is provided for. Whenever a bond or bond equivalent is to be terminated by a cancellation by the surety or trustee, the director may cause notice of such fact to be published. Bonds and bond equivalents shall provide that termination will not release the parties from liability arising out of facts or transactions occurring prior to the termination date.

003.01F In the case of bonds filed with the director, the registrant and surety of the bond shall be held and firmly bound to the State of Nebraska as trustee for all persons from whom the registrant has purchased slaughter livestock in Nebraska and failed to pay in full therefor before the close of the next business day following the purchase or within twenty-four (24) hours following the determination of the price, whichever may occur last, or, in the case of an express agreement between the seller and purchaser, according to the terms of such agreement. In the case of bond equivalents filed with the director, the trust agreement shall provide as beneficiary, the State of Nebraska for the benefit of all persons from whom the registrant has purchased slaughter livestock in Nebraska and failed to pay in full therefor before the close of the next business day following the purchase or within twenty-four (24) hours following the determination of the price, whichever may occur last, or, in the case of an express agreement between the seller and purchaser, according to the terms of such agreement. In the case of bond equivalents filed with the director, the trust agreement shall provide as beneficiary, the State of Nebraska for the benefit of all persons from whom the registrant has purchased slaughter livestock in Nebraska and failed to pay in full therefor before the close of the next business day following the purchase or within twenty-four (24) hours following the determination of the price, whichever may occur last, or, in the case of an express agreement between the seller and purchaser, according to the terms of such agreement. The bond or trust agreement of a registrant shall be conditioned for the payment only of those claims which arise from purchases of livestock from Nebraska residents, and further conditioned to provide that the proceeds of the bond or the fund of the trust shall not be used to pay fees, salaries, or expenses for legal representation, or be subject to attachment for any other claim, or to levy of execution upon a judgment based on any other claim.

003.01G Registrants operating more than one plant used to slaughter livestock purchased from Nebraska residents shall describe with particularity the exact locations of the plants slaughtering such livestock and thus covered by the bond or bond equivalent; Provided, that nothing contained herein shall prevent a registrant operating multiple plants from bonding each such plant individually, or establishing separate trust agreements for each plant.

003.01H Bonds filed with the director shall be with a surety company duly authorized to do business within the State of Nebraska, and trustees of bond equivalents filed with the director shall be institutions located within the State of Nebraska in which funds are invested or deposited.

003.01I Bonds and bond equivalents shall provide that persons damaged by nonpayment of obligations on the part of the registrant may

maintain an action against the registrant, and the surety on the bond or the trustee of the trust fund, even though not named as a party to the bond or bond equivalent.

003.01J Bonds and bond equivalents shall provide that any claim for recovery on the bond or trust agreement must be filed in writing with the surety, the trustee, or the director, and the party who receives such claim shall, within twenty-four (24) hours notify the other such party or parties and the registrant of the fact of such filing. Neither the surety on a bond nor the trustee of a trust agreement shall be liable to pay any claim if it is not filed in writing within one hundred and twenty (120) days from the date of the transaction on which the claim is based, or if suit thereon is commenced less than one hundred and eighty (180) or more than five hundred and forty-seven (547) days from the date of the transaction on which the claim is based.

003.01K Trust funds shall not be removed from trust by a registrant until the expiration of one hundred and twenty (120) days after the date of termination of a trust, and then only if no claims secured by the agreement have been filed under 33 NAC 1-003.01J, above. If any such claims have been filed, the withdrawal of funds by the registrant shall not be permitted until the claims have been satisfied or released and evidence of satisfaction or release has been filed with the director.

003.02 Each registrant shall file an annual financial statement with the director. Such statement shall:

003.02A Be filed within thirty (30) days prior to the anniversary date of the initial registration; Provided, that, at the option of the registrant, a date in lieu of the actual anniversary date may be designated by the director and the registrant, in which case, the annual statement shall be filed within thirty (30) days prior to the designated date,

003.02B Have been prepared by a Certified Public Accountant within one hundred and twenty (120) days prior to the date established in 33 NAC 1-003.02A, above,

003.02C Accurately reflect the financial condition of the business at the time of preparation, and

003.02D Contain a statement of the total amount of purchases of slaughter livestock in Nebraska during the period of time covered by the financial statement.

003.03 In cases wherein:

003.03A The registrant has reasonable cause to believe that the financial condition of the business may change to such an extent within the upcoming year as to cause a reasonable expectation that the registrant may be unable to fulfill his financial obligations incurred in the purchase of slaughter livestock, and

003.03B The conditions creating such reasonable belief are not readily ascertainable from the contents of the financial statement currently on file or in the process of being prepared for filing, each registrant shall file at the time such conditions become known or in conjunction with

the financial statement being prepared for filing, a detailed account of such conditions sufficient to enable the director to ascertain whether assurances of financial ability in addition to those provided for in these rules and regulations shall be required of the registrant.

003.04 Each registrant shall be required by the director, if determined by the director to be necessary, to file regular or special written reports or answers to specific questions for the purpose of furnishing information concerning the registrant's financial condition as it relates to his ability to fulfill his financial obligations incurred in the purchase of slaughter livestock if:

003.04A A statement is filed under 33 NAC 1-003.03, above,

003.04B The director determines that the financial statement filed under 33 NAC 1-003.02 above is inadequate to accurately reflect the financial conditions of the registrant, and no statement is filed under 33 NAC 1-003.03 above, or

003.04C The registrant fails to fully comply with the provisions of the Nebraska Livestock Sellers Protective Act or these rules and regulations.

003.05 After having been offered an opportunity for a hearing, each registrant shall be required by the director to furnish assurances of financial ability in addition to those specified herein in cases wherein:

003.05A The director determines such to be necessary based upon the existence of conditions which have or should have resulted in the filing of a statement under 33 NAC 1-003.03 above, or

003.05B The amount of the bond or bond equivalent filed hereunder, while in an amount equal to that required by 33 NAC 1-003.01B, above, is inadequate because of the volume of business conducted on a seasonable or other irregular basis.

The additional assurances the director may require may include but not be limited to bonding in an amount greater than required under 33 NAC 1-003.01B, above. Nothing contained herein shall prevent the director from foregoing an application for equitable relief under Section 54-1805 of the Nebraska Livestock Sellers Protective Act when the additional assurances of financial ability provided by the registrant are found by the director to adequately protect the Nebraska residents from whom the registrant purchases slaughter livestock.

003.06 The requirements of 33 NAC 1-003.01 shall not be enforced upon any registrant whose average annual purchases exceed \$500,000.00, as determined by the Packers and Stockyards Administration of the United States Department of Agriculture, and who is operating in compliance with the bonding provisions of the Federal Packers and Stockyards Act of 1921, as amended, and the regulations adopted thereunder. Such person shall continuously maintain on file with the director a conformed copy of its current bond or bond equivalent executed under the provisions of such act and regulations.

004 Effective Date These amendments shall become effective February 7, 1977. (NOTE: This rule first became effective on August 31, 1975.)

005 Annotation Neb. Rev. Stat. §§54-1801 to 54-1808.